IN THE UTAH COURT OF APPEALS

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Melany Zoumadakis, Plaintiff, Appellant, and Cross-appellee, v. Uintah Basin Medical Center, Inc.; Dr. Mark Mason, Lloyd Nielson, and Carolyn Smith, as individuals; and John Does 1-10, Defendants, Appellees, and Cross-appellants.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20080067-CA F I L E D (May 21, 2009) 2009 UT App 135

Eighth District, Duchesne Department, 030800083
The Honorable John R. Anderson

Attorneys: Jay L. Kessler, Magna, for Appellant and Cross-appellee
Blaine J. Benard and Carolyn Cox, Salt Lake City, for Appellees and Cross-appellants

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Before Judges Thorne, Bench, and Davis.

BENCH, Judge:

Plaintiff Melany Zoumadakis appeals the district court's grant of partial summary judgment and a jury verdict in favor of Defendants Uintah Basin Medical Center (Medical Center), Dr. Mark Mason (Doctor), Carolyn Smith (Clinical Nurse), and Lloyd Nielson (Director). We affirm.[1]

I. Summary Judgment

The district court correctly granted partial summary judgment in favor of Defendants, concluding that certain

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[1]In affirming the jury's verdict, we do not reach Doctor's contingent cross-appeal.

statements made about Plaintiff were not defamatory.[2] See West v. Thomson Newspapers, 872 P.2d 999, 1003-04 (Utah 1994) (stating that the appropriateness of a grant of summary judgment is a question of law, reviewed for correctness). "[A]n action for defamation is intended to protect an individual's interest in maintaining a good reputation." Id. at 1008. To state a successful claim for defamation, a plaintiff must prove that the defendant published a false, defamatory, nonprivileged statement about plaintiff to a third party, causing plaintiff damage. See id. at 1007-08.

Medical Center's statement to the Utah Department of Workforce Services that Plaintiff quit her job is not defamatory in nature because that statement is not harmful to her reputation. "[A] statement is defamatory if it impeaches an individual's honesty, integrity, virtue, or reputation and thereby exposes the individual to public hatred, contempt, or ridicule." Id. at 1008. Stating that Plaintiff quit her job, absent additional commentary or detail, is not harmful to her reputation because it does not elicit strong emotions such as hatred, contempt, or ridicule. Further, this statement is not defamatory because it caused Plaintiff no damages as she was granted unemployment benefits.

Director's statements in a disciplinary report that Plaintiff was "playing doctor without a license" and had the smell of alcohol on her breath during a home visit are not defamatory because they were not published. See DeBry v. Godbe, 1999 UT 111, ¶ 23, 992 P.2d 979 (requiring publication of a defamatory statement to be communicated to and understood by a third party). Plaintiff argues that the disciplinary report is in her employee file and either has been or could be published to potential future employers. However, a Medical Center employee stated that the contents of an employee file are confidential and are not disclosed to outside organizations. Further, Plaintiff offered no evidence that Medical Center has authorized the disclosure of the confidential information in her employee file, nor has she offered evidence that Medical Center has a practice of disclosing such information.

The following statements are not defamatory because they are subject to a qualified privilege, having been made to further a legitimate common interest: (1) Clinical Nurse's statements to Doctor that Plaintiff questioned Doctor's prescribed patient treatment; (2) Doctor's statements to Medical Center that a

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[2]We specifically address five of those statements but decline to address others for the reasons specified by the district court.

patient complained that Plaintiff had the smell of alcohol on her breath during a home visit; and (3) statements made at a meeting between two Medical Center employees that Plaintiff was fired because she was drinking on the job. See Brehany v. Nordstrom, Inc., 812 P.2d 49, 58 (Utah 1991). Defendants share a legitimate common interest in providing quality health care. Communicating complaints made about employees and reasons for an employee's termination furthers that interest by ensuring high standards are maintained, problems are resolved and not repeated, and good relationships with patients are preserved.

Defendants' qualified privilege was not lost due to maliciousness or excessive publication. See id. at 59 (stating that a qualified privilege may be lost if a statement is published excessively or with malice). Plaintiff speculates that Defendants' statements were made maliciously. However, the only evidence that Plaintiff offered to support her theory of malice is that Defendants could not have believed the patient's complaint was true because the patient had a history of making unsubstantiated complaints. This evidence proves only that another Medical Center employee knew of the patient's reputation for being a serial complainer and does not prove that Defendants knew of the patient's reputation. Plaintiff further speculates that the conversation between two Medical Center employees at a meeting constitutes excessive publication because the conversation could have been overheard by other employees outside the scope of the privilege. Plaintiff, however, offered no evidence that the statements were actually overheard by another employee. Due to absence of any evidence to support the conclusion that these statements were published either excessively or maliciously, Defendants are protected by a qualified privilege.

II. Jury Verdict

On the single statement that survived summary judgment and was submitted to a jury, we conclude that there is sufficient evidence to support the jury's verdict that Doctor's statement was not published. See Water & Energy Sys. Tech., Inc. v. Keil, 2002 UT 32, ¶ 15, 48 P.3d 888 (stating that a jury verdict will be disturbed only if, after viewing all the evidence and reasonable inferences drawn therefrom in the light most favorable to the verdict, it is determined that the verdict lacks substantial evidentiary support).

The jury concluded that Doctor's statement that Plaintiff was "playing doctor without a license" was not published, likely because the testimony at trial established that Doctor did not make that exact statement. At trial, most witnesses testified that they did not recall Doctor using the phrase "playing doctor

without a license." Rather, Doctor and others testified that he complained that Plaintiff questioned his prescribed treatment by directly telling his patients that it was "wrong" or "inappropriate." Plaintiff presented her defamation claim to the jury based upon the seriousness of the allegation that Plaintiff was engaging in the unauthorized practice of medicine and the harm that such a statement could do to her reputation as a nurse. Without establishing that Doctor actually said that Plaintiff was "playing doctor without a license," Plaintiff failed to prove that she was defamed due to the publication of that statement.

Accordingly, we affirm.

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Russell W. Bench, Judge

WE CONCUR:

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William A. Thorne Jr.,
Associate Presiding Judge

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James Z. Davis, Judge